FILED
MAR 13 1928
CHARLES ELMORE CROPLEY
CLERK

IN THE

Supreme Court of the United States

No. 283—October Term, 1927.

The United States of America, *Petitioner*,

vs.

Magnolia Petroleum Company, et al.

On Writ of Certiorari to Court of Claims.

MOTION TO MODIFY OPINION.

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Dated March 13, 1928.

Press of Byron S. Adams, Washington, D. C.

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The only point raised in this motion relates to the seeming inconsistency in the opinion rendered on February 20, 1928, in respect of facts found by the court below and averments not established.

In its opinion (bottom of page 3) the court said in respect of the year 1917:

> October 8, 1923, the Commissioner wrote respondent that its claim first filed would be allowed for $1,131,075.86 and that the one last filed would be rejected in full. January 18, 1924, the Commissioner wrote respondent concerning the

> interest allowance stating that no part of the claim first filed had been allowed; that $105,556.84 had been allowed on the basis of the claim last filed and that $1,025,519.52 of the refund was "attributable to points not raised in the claim."

The concluding sentence of the opinion refers to the above as "ambiguous findings." The court below found that these letters had been written (Finding IX, R. 27 and Finding XIII, R. 30). They formed a part of the history of the case. The court did not find the averments in the letters to be facts. With the entire evidence in the case before it the court below made Finding X (R. 28), which is not mentioned in the opinion, and which is as follows:

> The Commissioner of Internal Revenue upon facts duly furnished him by plaintiff with its refund claims, or separately, and upon facts agreed upon, allowed plaintiff's refund claims on October 11, 1923, as follows:
>
> Year 1916, claim filed September 20, 1920, for $114,565.44, allowed for $105,571.95.
>
> Year 1917, claim filed June 12, 1920, for $1,966,600.87, allowed for $1,131,075.86.

The above is a positive affirmative finding of fact—a finding which it was the duty of the court below to make. It is one in which the court found the averments in the Commissioner's letter of October 8, 1923 (Finding IX, R. 27), written three days prior to the formal allowance of the claims, were established and not those contained in the letter of January 18, 1924, embodied in Finding XIII, R. 30, written more than three months after the allowance of the claims. The

letter of October 8, 1923, merely said the claims *would be* allowed in the amounts stated. Finding X (R. 28) establishes the claims were allowed in those amounts and that such allowances were made on October 11, 1923. Further, Finding X is fortified by Findings XI and XII (R. 28-29) which are the official certificates of overassessment showing the allowance of the amounts stated in Finding X. In each of these certificates of overassessment there appears this statement:

> This overassessment is allowed in connection with the examination of a claim for refund filed by you within the required time as prescribed by section 3228 of the Revised Statutes as amended by section 1316 of the revenue act of 1921.

This court held the provisions of section 1324(a) of the Revenue Act of 1921[1] governed in respect of interest upon the refunds and that respondent's protest was insufficient; hence in order to ascertain the amount of interest to which respondent is entitled under that section respondent need only show the dates its claims were filed (interest began to run six months thereafter), the date of the allowance of the claims (interest ceased on that date) and the amount

[1]Section 1324(a) of the Revenue Act of 1921, c. 136, 42 Stat. 227, 316: "That upon the allowance of a claim for the refund of * * * internal revenue taxes paid, interest shall be allowed and paid upon the total amount of such refund * * * as follows: (1) if such amount was paid under a specific protest setting forth in detail the basis of and reasons for such protest, from the time when such tax was paid, or (2) if such amount was not paid under protest but pursuant to an additional assessment, from the time such additional assessment was paid, or (3) if no protest was made and the tax was not paid pursuant to an additional assessment, from six months after the date of filing of such claim for refund or credit * * *."